BOISE, FRIDAY, NOVEMBER 2, 2007 AT 8:50 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

LANE RANCH PARTNERSHIP, an Idaho general partnership,	)	
Plaintiff-Respondent,	)	
v.	)	**Docket No. 33423**
CITY OF SUN VALLEY, a political subdivision of the State of Idaho,	)	
Defendant-Appellant.	)	

Appeal from the District Court of the Fifth Judicial District of the State of Idaho, Blaine County. Hon. Robert J. Elgee, District Judge.

Hawley Troxell Ennis & Hawley, Ketchum, for appellant.

Robertson & Slette, Twin Falls, for respondent.

This is an appeal arising from a private road application by Lane Ranch Partnership to the City of Sun Valley. Sun Valley's Community Development Director, the city counsel and the Planning and Zoning Commission all found the private road application to be incomplete under Sun Valley's Municipal Code. The district court reversed the City's interpretation of the Code. Sun Valley appeals to this Court.

BOISE, FRIDAY, NOVEMBER 2, 2007 AT 10:00 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

BRANDON ANDRAE,	)	
	)	
Plaintiff-Appellant,	)	
	)	
v.	)	**Docket No. 33250**
	)	
IDAHO COUNTIES RISK MANAGEMENT PROGRAM UNDERWRITERS,	)	
	)	
Defendant-Respondent.	)	
	)	

Appeal from the District Court of the Fourth Judicial District of the State of Idaho, Ada County. Hon. Kathryn A. Sticklen, District Judge.

Filicetti Law Office and Holzer, Edwards & Harrison, Chartered, Boise, for appellant.

Anderson, Julian & Hull, LLP, Boise, for respondent.

Appellant Brandon Andrae is a deputy sheriff in Twin Falls County. On his way to work one morning, he stopped to assist several vehicles pulled alongside the road with their hazard lights flashing. After he emerged from his patrol car, he walked towards the vehicles, correcting a fallen traffic cone on the way. At that moment, an underinsured driver struck and injured him. Andrae sought coverage through the Idaho Counties Risk Management Program (ICRMP), which provided insurance to the County for underinsured or uninsured motorists. ICRMP denied coverage, contending Andrae was not occupying his patrol vehicle at the time of the accident. ICRMP filed a complaint for a declaratory judgment with the district court, and then filed a motion for summary judgment. The district court granted the motion, agreeing with ICRMP's contention that Andrae was not occupying the vehicle. Andrae appealed to this court.

BOISE, FRIDAY, NOVEMBER 2, 2007 AT 11:10 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

CHARLES CROWLEY,	)	
	)	
Plaintiff-Respondent,	)	
	)	
v.	)	**Docket No. 33615**
	)	
ANNE CRITCHFIELD and KIM P. CRITCHFIELD,	)	
	)	
	)	
Defendants-Appellants.	)	

Appeal from the District Court of the Fifth Judicial District of the State of Idaho, Twin Falls County. Hon. Nathan W. Higer, District Judge.

Quane Smith LLP, Idaho Falls, for appellants.

M. Lynn Dunlap, Twin Falls, for respondent.

Defendant appeals from the district court order granting Plaintiff's motion for new trial, or in the alternative, additur. The action arises from a car accident resulting in a personal injury claim by the Plaintiff. Defendant stipulated to liability. The issues before the trial court consisted of the nature and extent of the injuries resulting from the accident and damages. The jury returned a verdict for Plaintiff, awarding $12,101.87 in economic damages and $0 for non-economic damages. The district court found the award to be against the weight of the evidence and the result of jury passion or prejudice and granted Plaintiff's motion for a new trial, or in the alternative, additur in the amount of $12,272.13 in economic damages and $40,000 in non-economic damages for a total damage award of $64,374. Defendant appeals to this Court.

BOISE, MONDAY, NOVEMBER 5, 2007 AT 8:50 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

GEM STATE INSURANCE COMPANY, an Idaho corporation,	)	
Plaintiff-Respondent,	)	
v.	)	
	)	**Docket No. 33141**
THOMAS EVON HUTCHISON d/b/a HUTCHISON CONSTRUCTION COMPANY,	)	
Defendant-Appellant.	)	

Appeal from the District Court of the Fifth Judicial District of the State of Idaho, Twin Falls County. Honorable G. Richard Bevan, District Judge.

Jeffrey E. Rolig, P.C., Twin Falls, for appellant.

Brian D. Harper, Twin Falls, for respondent.

Thomas Hutchison was constructing a home for the owners, Herb Mitzlaff and Rosa Masterson. A fire broke out in the structure and damaged the property. The owners' insurance company, Gem State Insurance Company (Gem State), paid to repair the damages. Gem State sued Mr. Hutchison and argued the fire was caused by a propane heater he negligently set up in the house. Prior to summary judgment, the district court struck Mr. Hutchison's affidavit because his opinions in the affidavit were inadmissible. On summary judgment, the district court ruled that Mr. Hutchison had negligently caused the fire.

Mr. Hutchison appeals both rulings and argues: (1) Gem State's affidavit does not contain admissible evidence and the district court should not have relied on the affidavit; (2) the district court should not have granted summary judgment because genuine issues of material fact existed in the record and Mr. Hutchison was not negligent; and (3) the district court should not have struck Mr. Hutchison's affidavit. Gem State argues the district court should not have allowed Mr. Hutchison to present oral argument during the summary judgment hearing because he failed to provide a written argument contrary to Rule 56(c) of the Idaho Rules of Civil Procedure.

BOISE, MONDAY, NOVEMBER 5, 2007 AT 10:00 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

KENNETH COLE,	)	
	)	
Plaintiff-Respondent,	)	
v.	)	
GLADYS ESQUIBEL,	)	**Docket No. 33502**
	)	
Defendant-Appellant,	)	
and	)	
DOES I-V,	)	
	)	
Defendants.	)	

Appeal from the District Court of the Fifth Judicial District of the State of Idaho, Cassia County. Hon. Monte Basil Carlson, District Judge.

Saetrum Law Offices, Boise, for Appellant.

Johnson & Lundgreen, Boise, for Respondent.

Gladys Esquibel (Esquibel) appeals the district court's judgment in favor of Kenneth Cole (Cole) on grounds that district judge abused his discretion in denying Esquibel's motion for new trial and remittitur where the evidence was insufficient to justify the jury's award of economic damages, and the jury rendered its award under the influence of passion or prejudice.

On November 14, 2002, Esquibel and Cole were involved in a motor vehicle accident. Cole claimed Esquibel caused the crash; Esquibel claimed Cole contributed to the accident, including his own injuries. During the trial, Cole submitted past medical specials in the amount of $16,745.68 and presented evidence to the jury showing his injuries were permanent, his pain unlikely to go away, and that the accident seriously and permanently impaired his ability to perform usual activities. Cole presented evidence showing he has sought over-the-counter medications, chiropractic treatment, physical therapy, and prescription medications to help alleviate the pain from the accident – and that these treatments would be ongoing. The court instructed the jury that the average life expectancy of a man Cole's age is twenty years.

Upon submitting the case to the jury, it found Esquibel negligent and awarded Cole a total of $165,000, with $40,000 in economic damages and $125,000 in non-economic damages. The district court entered its judgment on June 5, 2006.

On June 16, 2006, Esquibel moved for a new trial and remittitur on grounds that the jury awarded Cole excessive damages which were a result of influence of passion or prejudice; there was jury misconduct; and the evidence was insufficient to justify the award of damages. Cole objected, arguing that the evidence supported the award, and the verdict should not be disturbed. The district court issued its order on August 7, 2006, denying Esquibel's motion for new trial and remittitur and awarding Cole costs and attorney fees. On the same day, the court issued its amended judgment, awarding Cole a total judgment of $183,048.39. Esquibel timely appealed.

TWIN FALLS, WEDNESDAY, NOVEMBER 7, 2007 AT 10:00 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

GILTNER, INC., a division of Progressive Logistics, Inc.,	)	
Employer-Appellant,	)	
v.	)	**Docket No. 33611**
IDAHO DEPARTMENT OF COMMERCE AND LABOR,	)	
Respondent.	)	

Appeal from the Industrial Commission.

Fredericksen, Williams, Meservy & Lothspeich, LLP, Jerome, for appellant.

Hon. Lawrence G. Wasden, Attorney General, Boise, for respondent.

Appellant Giltner, Inc. (Giltner) is a transportation company located in Jerome, Idaho, and operating in a number of states. Giltner engages two types of drivers to deliver goods and merchandise to its customers, including "owner/operator drivers," who operate under Giltner's DOT authority. Each of these "owner/operator drivers" entered into two agreements with Giltner, a "Contractor Operating/Lease Agreement" and an "Equipment Lease Agreement."

The Respondent, State of Idaho, Department of Commerce and Labor (the Department), conducted an audit of Giltner, after a former driver applied for unemployment insurance benefits and the Department discovered Giltner had not reported any wages for him. A tax auditor found that the remuneration received by the "owner/operator drivers" operating under Giltner's DOT authority was wages for covered employment and imposed a tax liability of $50,832.24 for the audit period. Giltner filed a timely appeal of the tax liability determination to the Department. An Appeals Examiner for the department conducted a three-day hearing. It then affirmed the finding of unemployment tax liability. Giltner then timely appealed that decision to the Idaho Industrial Commission (the Commission). The Commission conducted a *de novo* review of the record, but did not conduct a hearing or take additional evidence. The Commission then affirmed the Department's finding of unemployment tax liability. Giltner now appeals that decision to this Court.

On appeal, Giltner argues that the Commission erred in not conducting a hearing and taking new evidence and that it erred by considering evidence that Giltner required compliance with federal and state law and insurance regulations in its leases as evidence of control over the "owner/operator drivers" and to find that they were not independent contractors.

TWIN FALLS, WEDNESDAY, NOVEMBER 7, 2007 AT 11:10 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

EUGENE L. MASON, individual,	)	
	)	
Plaintiff-Respondent,	)	
	)	
v.	)	
	)	
STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, a foreign entity, GARY STOKES, agent for State Farm Mutual Automobile Insurance Company, and/or individual,	)	**Docket No. 33358**
	)	
Defendants-Appellants,	)	
	)	
and	)	
	)	
JOHN DOES, individually, DOES I through X, and BUSINESS ENTITIES, DOES I through X,	)	
	)	
Defendants.	)	

Appeal from the District Court of the Fifth Judicial District of the State of Idaho, for Twin Falls County. Hon. G. Richard Bevan, District Judge.

Elam & Burke, P.A., Boise, for appellants.

Holland & Hart, LLP, Boise, and Pedersen & Jackson, Twin Falls, for respondent.

Eugene L. Mason was involved in an automobile accident on October 6, 2003. After the accident, Mason sought treatment for pain in his neck and shoulders. Due to continuing pain, Mason underwent surgery. After the surgery, State Farm requested an independent medical examination, and apportioned 60% of Mason's symptoms to the automobile accident and 40% to pre-existing traumas. Based on this analysis, State Farm paid 60% of Mason's medical expenses. Mason sued State Farm seeking payment of the remaining medical expenses, and alleging negligence, bad faith, breach of contract, and intentional infliction of emotional distress, each premised on the fact that State Farm refused to pay Mason's medical expenses. State Farm filed a Motion for Stay of Proceedings and to Compel Arbitration based on the medical payment coverage provision of Mason's insurance policy, which State Farm claims "requires arbitration to resolve any disputes over the amount due and causation under that coverage." The district court denied Mason's motion, finding that the parties' dispute is outside the scope of the arbitration clause. State Farm asks the Court to reverse the district court's order and remand with instructions to the district court to order arbitration.

TWIN FALLS, THURSDAY, NOVEMBER 8, 2007, AT 8:50 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

SEINIGER LAW OFFICE, P.A. and WM. BRECK SEINIGER, JR., Attorney at Law, and VIVIAN JENNINGS,	)	
Plaintiffs-Appellants-Cross Respondents,	)	
v.	)	
	)	**Docket No. 33192**
NORTH PACIFIC INSURANCE COMPANY, a foreign corporation, CAMBRIDGE INTEGRATED SERVICES, a foreign corporation; LIBERTY NORTHWEST, a foreign corporation, and ONE BEACON INSURANCE COMPANY, a foreign corporation,	)	
Defendants-Respondents-Cross Appellants.	)	

Appeal from the District Court of the Fifth Judicial District of the State of Idaho, Twin Falls County. Honorable John K. Butler, District Judge.

Runft & Steele Law Offices, PLLC, Boise; Gordon Law Offices, Chtd., Boise; and Carty Law, P.A., Boise, for appellants-cross respondents.

Maguire & Kress, Pocatello, for respondents-cross appellants.

Appellant Vivian Jennings's insurance company, North Pacific Insurance (North Pacific), paid $5,000 for injuries she sustained in an automobile collision. Her attorney, Appellant Breck Seiniger, offered to recover North Pacific's $5,000 claim against the other driver involved in the collision. North Pacific declined Mr. Seiniger's representation and requested an arbitration hearing with the other driver's insurance carrier, Farm Bureau Mutual Insurance (Farm Bureau).

Mr. Seiniger settled Ms. Jennings injury claim with Farm Bureau, recovered North Pacific's claim, and asked North Pacific to pay a propionate share of his attorney fees, which North Pacific refused. On summary judgment the district court ruled that the common fund doctrine required North Pacific to pay a share of his attorney fees. Additionally, the district court ruled that the Appellants could not bring an action against North Pacific for punitive damages.

Mr. Seiniger and Ms. Jennings appeal this ruling and argue they are entitled to bring claims against North Pacific based on breach of contract and punitive damages. North Pacific appeals and argues the common fund doctrine does not apply because it was pursuing its own claim through arbitration and Mr. Seiniger and Ms. Jennings were not entitled to an award of attorney fees at the trial court level. Both parties seek an award of attorney fees on appeal.

TWIN FALLS, THURSDAY, NOVEMBER 8, 2007 AT 10:00 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

BIRDWOOD SUBDIVISION HOMEOWNERS' ASSOCIATION, INC., an Idaho nonprofit corporation, and AMY C. BROWNING, individually, and as co-trustee of the Amy G. Browning Revocable Trust dated July 8, 2005, **Plaintiffs-Counterdefendants-Appellants,** **v.** **BULOTTI CONSTRUCTION, INC., an Idaho corporation,** **Defendant-Counterclaimant-Respondent.**	**Docket No. 33391**

Appeal from the District Court of the Fifth Judicial District of the State of Idaho, in and for Blaine County. Hon. Robert J. Elgee, District Judge.

John A. Seiller, Ketchum, for Plaintiffs-Counterdefendants-Plaintiffs.

Robertson & Slette, PLLC, Twin Falls, for Defendant-Counterclaimant-Respondent.

The Birdwood Subdivision Homeowners' Association and Amy C. Browning, president of the association (the Association), appeal the district court's order holding that neither of two sets of covenants, conditions, and restrictions (CCRs) was valid or binding on Bulotti Construction Inc. (Bulotti).

In 1979, Pauline Bird acquired title to real property in Blaine County. On March 31, 1981, a plat showing the "Bird Wood Subdivision" was recorded in Blaine County that divided Pauline Bird's parcel into fifteen lots. The plat was signed by Stanley K. Bird, Randy P. Bird, and S. Lynn Bird as the owners of the parcel of land, and not by Pauline Bird. That same day, a declaration of CCRs for the Birdwood Subdivision was recorded in Blaine County. Stanley K. Bird and S. Lynn Bird signed those CCRs.

Between 1981 and 1992, Pauline Bird conveyed several parcels of land by various deeds, referring to specific lot numbers of the "Bird Wood" or "Birdwood" subdivision in the deeds. On September 9, 2003, Pauline Bird deeded a 2.2 acre lot to Bulotti. Bulotti sought to subdivide that lot into four smaller lots. In October of 2003, the Association amended the CCRs to state that lots in the subdivision shall not be further divided. The district court found that neither of the CCRs, original or amended, applied to Bulotti.

The Association argues that because Pauline Bird referred to the Birdwood Subdivision plat when conveying her parcels, that equitable principles would prevent her, and consequently

Bulotti, from asserting that the plat was invalid. The Association further argues that Bulotti had actual notice of the CCRs prior to acquiring the lot, so was prevented from asserting it was not bound by them.

Bulotti rejects the Association's arguments, and contends that its lot is not subject to the Association's CCRs because it purchased the lot from Pauline Bird, who was not a party to either of the CCRs at issue. Bulotti also argues that the owners who signed the plat as owners were never the legal owners of the parcel of land at issue, and therefore the subdivision plat is invalid.

TWIN FALLS, THURSDAY, NOVEMBER 8, 2007 AT 11:10 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

ARDEN CRANNEY and HEIDI CRANNEY, husband and wife, **Plaintiffs-Respondents,** **v.** **MUTUAL OF ENUMCLAW INSURANCE COMPANY, a foreign corporation,** **Defendant-Appellant,** **and** **FARM BUREAU MUTUAL INSURANCE COMPANY OF IDAHO, an Idaho corporation,** **Defendant.**	**Docket No. 33501**

Appeal from the District Court of the Fifth Judicial District of the State of Idaho, Cassia County. Hon. Monte Basil Carlson, District Judge.

Cantrill, Skinner, Sullivan & King, LLP, Boise, for Appellant.

Hepworth, Lezamiz & Janis Chtd., Twin Falls, and Merrill & Merrill, Pocatello, for Respondents.

Mutual of Enumclaw Insurance Company (Mutual of Enumclaw) appeals the district court's judgment in favor of Arden and Heidi Cranney (Cranneys) on grounds that the court erred in confirming the arbitration award of prejudgment interest on damages the Cranneys recovered under an underinsured motorist policy when the amount was neither liquidated nor certain until the arbitrator announced the award.

On January 29, 2003, Arden Cranney and Milo Gruwell (Gruwell) were involved in a motor vehicle accident in Burley, Idaho. The Cranneys filed suit against and eventually reached a settlement agreement with Gruwell, who was at fault in the collision. At the time of the accident, Gruwell carried liability insurance with liability

limits of $50,000 per person and $100,000 per accident. The settlement reached between Gruwell and the Cranneys exceeded this limit, as did Cranney's damages from the accident.

Mutual of Enumclaw insured the Cranneys under a policy that included underinsured motorist coverage for damages resulting from bodily injury in the sum of $500,000. The policy also contained an arbitration clause, including language that "each party will pay the expenses it incurs" during an arbitration. The matter ultimately went to arbitration, with the retired District Judge Ron Schilling (Arbitrator Schilling) serving as arbitrator. The Cranneys and Mutual of Enumclaw disputed, among other things, whether interest was due and the amount thereof. Arbitrator Schilling ultimately awarded the Cranneys $160,737, including $61,262 in interest.

On May 31, 2006, the Cranneys moved to confirm the arbitration award, and Mutual of Enumclaw objected, believing Arbitrator Schilling used the wrong formula in calculating interest. The court issued its opinion on August 15, 2006, confirming the arbitration award on the ground that Arbitrator Schilling correctly followed the prejudgment interest formula announced in *Greenough v. Farm Bureau*, 142 Idaho 589, 130 P.3d 1127 (2006). On August 18, 2006, the district court then entered its judgment against Mutual of Enumclaw and in favor of the Cranneys for $159,682.99. Mutual of Enumclaw timely appealed, raising one issue for appellate review: whether there should be prejudgment interest on an award of benefits for damages recoverable under an underinsured motorist policy, when the amount is not liquidated and not certain until the arbitrator announces the award.

TWIN FALLS, FRIDAY, NOVEMBER 9, 2007 AT 10:00 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

DOROTEO MIKE HERNANDEZ,	)	
	)	
Claimant-Appellant,	)	
	)	
v.	)	
	)	
TRIPLE ELL TRANSPORT, INC., Employer, STATE INSURANCE FUND and LIBERTY NORTHWEST INSURANCE CORPORATION, Sureties,	)	**Docket No. 33592**
	)	
Defendants-Respondents.	)	
	)	

Appeal from the Idaho Industrial Commission of the State of Idaho.

Kent D. Jensen, Burley, for appellant.

M Jay Meyers, Pocatello, for employer-surety respondent.

Monte R. Whittier, Boise, for surety respondent.

On May 4, 2004, Hernandez signed a contract with Triple Ell Transport, Inc. (Triple Ell) to haul and unload materials, as well as to lease his truck to Triple Ell. While carrying out these duties in California, Hernandez tore a muscle in his right leg and suffered a small hematoma. As a result of the surgery that followed, Hernandez incurred a bill of $28,939.21. For these costs, he filed a workers' compensation claim, which was denied because the Industrial Commission found that he was an independent contractor rather than an employee of Triple Ell. As a result, Hernandez was ineligible to receive benefits under the workers' compensation policy through the State Insurance Fund. The Commission also found that he had failed to elect coverage for himself as a sole proprietor under a Liberty Northwest policy issued to insure Hernandez' employees. From this decision, Hernandez appeals.

TWIN FALLS, FRIDAY, NOVEMBER 9, 2007 AT 11:10 A.M.

IN THE SUPRME COURT OF THE STATE OF IDAHO

TRILOGY NETWORK SYSTEMS, INC., a Nevada corporation,	)	
	)	
Plaintiff-Appellant,	)	
	)	
v.	)	**Docket No. 33824**
	)	
DAVID JOHNSON,	)	
	)	
Defendant-Respondent.	)	
	)	

Appeal from the District Court of the Fifth Judicial District, State of Idaho, Minidoka County. Hon. John K. Butler, District Judge.

J. Justin May, Boise, for appellant.

Kent David Jensen, Jerome, for respondent.

Respondent David Johnson was employed by Appellant Trilogy Networks Systems, Inc. (Trilogy). After Johnson terminated his employment with Trilogy, Trilogy instituted a lawsuit against Johnson. That lawsuit was ultimately settled, and Trilogy and Johnson entered into a stipulated settlement agreement which contained provisions regarding with which of Trilogy's customers Johnson could and could not do business for one year.

During the year covered by the stipulation Johnson did business with Seastrom Manufacturing, Inc. (Seastrom). Both Trilogy and Johnson had submitted bids for supplying computer hardware and software to Seastrom. Seastrom awarded Johnson the contract on the software and Trilogy the contract on the hardware. However, Seastrom was one of the customers with whom Johnson was not to do business. During the bidding process, Trilogy became aware of Johnson's bid and notified Johnson that it objected to his dealings with Seastrom. Nonetheless, Johnson continued dealing with Seastrom, and Trilogy ultimately filed suit against Johnson for breach of contract and damages.

After a court trial, the district court found Johnson had breached the agreement with Trilogy. However, the district court also found Trilogy had failed to prove its damages with reasonable certainty. It then entered judgment in favor of Trilogy, but did not award Trilogy damages or attorney fees. Trilogy appeals the district court decision as to damages and attorney fees. On appeal, Trilogy argues that it presented sufficient evidence for the court to determine damages and that the court erred in determining that there was no prevailing party for purposes of awarding fees and costs.